

Pacific Physicians Services, Inc. d/b/a U.S. Family Care San Bernardino and Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL-CIO. Case 31-CA-20614

September 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On July 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 31-RC-7080.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 22, 1994, the General Counsel filed a Motion for Summary Judgment. On August 24, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 15, 1994, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election. In addition, the Respondent denies that the information requested by the Union is necessary and relevant, asserting that some or all of that information is not relevant or is otherwise confidential.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

¹ 313 NLRB 1176 (1994).

We find that the Respondent also has not raised any issue warranting a hearing with respect to the Union's information request. The Respondent contends that the General Counsel's Motion for Summary Judgment on the information allegation should be denied inasmuch as the Union's request referred to "all" employees rather than just unit employees, and was therefore overbroad, and because the request sought the home addresses of employees, which, it asserts, is private information protected by the right of privacy.² We find the Respondent's contentions in this regard without merit. The Union sought the following information from the Respondent:

- (1) List of all employees with home addresses;
- (2) Seniority dates of all employees;
- (3) Rate of pay of all employees;
- (4) List of all classifications, including the minimum and maximum rate range;
- (5) Minimum and Maximum wages per hour and the rate range of each employee and also, the method of progression;
- (6) A copy of the insurance plan (including the amount the Company pays and the amount the employee pays);
- (7) The number of paid holidays in effect at your plant;
- (8) Pension Plan or Severance Plan, if any;
- (9) Requirements and amount of vacation;
- (10) Incentive Plan, if any;
- (11) Night shift premium;
- (12) Any other benefit or privilege that your employees now receive.

It is well established that the foregoing type of wage and employment information sought by the Union, including unit employees' home addresses, is presumptively relevant for purposes of collective bargaining and must be furnished on request.³ Further, even if the Union's use of the word "all" without further explanation could be construed as requesting information regarding nonunit as well as unit employees, this would not justify the Respondent's blanket refusal to comply with the Union's request. It is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent it encompasses necessary and relevant information.⁴

² In support of its latter (privacy) argument, the Respondent cites *U.S. Department of Defense v. FLRA*, 114 S.Ct. 1006 (1994).

³ See, e.g., *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). We find that *U.S. Dept. of Defense v. FLRA*, supra, is clearly distinguishable as that was a public sector case and was decided under the Privacy Act, which is not applicable here.

⁴ See *Holiday Inn Coliseum*, 303 NLRB 367 fn. 6 (1991), and cases cited there.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, is now, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the State of Delaware, with an office and place of business located in San Bernardino, California, where it is engaged in providing turnkey facilities and support services to medical professionals. The Respondent, in the course and conduct of its business operations, annually supplies services valued in excess of \$50,000 directly to customers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 9, 1993, the Union was certified on April 29, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time employees employed by the Employer in the patient services, nursing and radiology departments, the administrative aide and the PBX operator at 2150 Waterman Avenue, San Bernardino, California.

Excluded: All other employees including ophthalmology employees, professional employees, guards and supervisors, as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about May 16, 1994, the Union has requested the Respondent to bargain and to furnish relevant and necessary information and, since May 26, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 26, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the relevant and necessary information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date that the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Physicians Services, Inc. d/b/a U.S. Family Care San Bernardino, San Bernardino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time employees employed by the Employer in the patient services, nursing and radiology departments, the administrative aide and the PBX operator at 2150 Waterman Avenue, San Bernardino, California.

Excluded: All other employees including ophthalmology employees, professional employees, guards and supervisors, as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in San Bernardino, California, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time employees employed by the Employer in the patient services, nursing and radiology departments, the administrative aide and the PBX operator at 2150 Waterman Avenue, San Bernardino, California.

Excluded: All other employees including ophthalmology employees, professional employees, guards and supervisors, as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

PACIFIC PHYSICIANS SERVICES, INC.
D/B/A U.S. FAMILY CARE SAN
BERNARDINO